

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28<sup>TH</sup> DAY OF FEBRUARY 2020

BEFORE

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

**M.F.A. NO.10191/2011 (MV)**

BETWEEN :

Sri.Mahesh S.,  
Aged about 23 years,  
S/o. Sri. Sanjeeva Poojary,  
R/at Bhandaribailu House,  
Shirlalu Village,  
Karkalla Taluk – 574 104.

... APPELLANT

(By Sri. Pavanchandra Shetty, Advocate.)

A N D :

1. Mahaveera Jain,  
Aged about 54 years,  
S/o. Late Kumarayya Kambali,  
R/at Kushmandini Motors,  
Bajagoli. Mudaru Village,  
Karkalla Taluk – 574 104.
2. The Divisional Manager,  
The United India Insurance Co.Ltd.,  
Udupi Divisional Office,  
Udupi – 576 101.

... RESPONDENTS

(By Sri. O.Mahesh, Advocate for R.2,  
Notice to R.1 is dispensed with.)

This Miscellaneous First Appeal is filed under Section 173(1) of MV Act against the judgment and award dated 18.07.2011 passed in MVC No.592/2010 on the file of Senior Civil Judge and AMACT, Karkala, partly allowing the claim petition for compensation and seeking enhancement of compensation.

This appeal coming on for hearing this day, the Court delivered the following :

#### JUDGMENT

The claimant being dissatisfied with the compensation awarded and also by the apportionment of contributory negligence to the extent of 50% is in appeal.

2. The case put forth by the claimant was that when he was driving his motor cycle bearing Regn.No.KA-21-H-8393 from Mahalingeshwara Temple entrance in Kervashe – Shettibettu Road, the driver of the bus bearing Regn. No.KA-20-AB-9 hit him from the opposite side, which resulted in serious injuries. A claim petition was filed contending that due to the injuries, claimant had been

permanently disabled and hence he was entitled to be compensated.

3. The owner of the bus did not contest the proceedings. However, the insurance company, as usual, contested the petition by denying all the averments of the claim petition.

4. The Tribunal on consideration of the evidence adduced before it came to the conclusion that an accident had in fact occurred between the motor cycle driven by the claimant and the bus bearing Regn.No.KA-20-AB-9. However, the Tribunal came to the conclusion that the claimant had also been responsible for the cause of the accident and contributed negligence at 50%.

5. As far as compensation was concerned, the Tribunal awarded the following sums;

Pain and sufferings	Rs.20,000/-
Medical expenses	Rs.20,000/-

Food, attendant and conveyance	Rs. 3,000/-
Loss of income during laid up Period	Rs. 9,000/-
Loss of amenities of life due to partial permanent disability	Rs. 20,000/-
Future Medical expenses	Rs.10,000/-
Total	Rs.82,000/-

6. The learned counsel for the claimant contended that apportionment of negligence was totally incorrect. She contended that having regard to the fact that the claimant was driving the motor cycle on the left side of the road i.e. on the proper side, no negligence could be attributed to the claimant. She also contended that the notional income determined by the Tribunal at Rs.3,000/- was on the lower side and at least as per the chart prepared by the Karnataka State Legal Services Committee the notional income of Rs.5,500/- had to be adopted. She further submitted that the sums awarded towards pain and sufferings, medical expenses, nourishment, amenities were on the lower side and they also require to be enhanced.

7. The insurance company on the other hand contended that there was absolutely no error in awarding compensation by the Tribunal. He contended that the Tribunal had correctly apportioned negligence to the extent of 50% and that the sums awarded by the Tribunal was just and proper.

8. I have considered the submissions of the learned counsel for the parties and perused the material on record.

9. The Tribunal, while fastening the contributory negligence on the claimant, has stated that as per the police records, it was clear that the claimant had still 5 feet space towards his left side and there was two feet mud road to which the claimant could have gone and avoided the accident. According to the Tribunal, as the claimant did not move towards left side though there was space, he had contributed to the accident.

10. In my view, this reasoning of the Tribunal cannot be accepted. So long as the claimant was driving on the

proper side of the road and within the space meant for him it cannot be stated that he was responsible for the cause of the accident. The reasoning of the Tribunal by itself would indicate that the bus was actually traversing on the path meant for the motor bike and therefore if there was any negligence, it was completely on the part of the driver of bus. Therefore, I am of the view that the finding of the Tribunal so far as contributory negligence to the extent of 50% cannot be sustained and I hold that the driver of the bus alone was responsible for causing the accident. Accordingly, the insurance company will have to satisfy the award in its entirety.

11. As far as compensation is concerned, despite the fact that the claimant spent Rs. 30,578/- towards medical expenses, the Tribunal has awarded only Rs.20,000/-. This approach of the Tribunal cannot be accepted. When the claimant had incurred expenditure of Rs.30,578/- towards medical expenses and produced bills in support of the said claim, the Tribunal ought to have awarded the said sum.

12. The Tribunal has awarded only a sum of Rs.20,000/- towards pain and suffering. In view of the fact that there was facial disfigurement, as a result of the accident and in view of the further fact that the Tribunal has come to the conclusion that he had suffered 10% permanent disability all over his face it would be just and appropriate to enhance the compensation Rs.40,000/- towards pain and sufferings.

13. Similarly, in view of the aforesaid disability suffered by the claimant he would also be entitled to Rs.40,000/- towards loss of amenities.

14. Admittedly, the claimant was hospitalized for about 10 days. Having regard to the expenses that would have been incurred for those 10 days, I am of the view that the Tribunal ought to have awarded a sum of Rs.5,000/- as against Rs.3,000/-.

15. The Tribunal has awarded a sum of Rs.9,000/- towards loss of income during laid up period by

determining the notional income at Rs.3,000/-. Since there was no credible evidence to establish the actual income of the claimant, in my view, it would prudent to adopt the notional income determined by the State Legal Services Authority at Rs.5,500/- per month for the accident victims of the year 2010. Accordingly, the loss of income during laid up period would stand increased to Rs.16,500/-.

16. In so far as future medical expenses, the compensation awarded is just and proper and the same is confirmed.

17. Consequently, the claimant would be entitled to following sums;

Pain and sufferings	Rs.40,000/-
Medical expenses	Rs.30,000/-
Food, attendant and conveyance	Rs. 5,000/-
Loss of income during laid up Period	Rs. 16,500/-
Loss of amenities of life due to partial permanent disability	Rs. 40,000/-
Future Medical expenses	Rs.10,000/-
Total	Rs.1,41,500/-



18. The judgment and award of the Tribunal is modified to the above extent. The insurance company shall satisfy the said compensation. The enhanced compensation shall carry 6% interest from the date of the petition till its realization.

19. The appeal is accordingly allowed in part.

**Sd/-  
JUDGE**

Msu/-